

To publish proposed regulations the following verification must be signed and returned to the Clerk of the State Register

VERIFICATION

This certifies that I have reviewed the text of this document and determined that, with the stricken text deleted and the new text incorporated, the text reads as the agency intends it to read.

5/17/19
Date

Jacelyn Boyd
Reviewing Officer

Document No. 4879
PUBLIC SERVICE COMMISSION
CHAPTER 103
Statutory Authority: 1976 Code Section 58-3-140

103-817.1. E-Filing and E-Service. (New)

Preamble:

The Public Service Commission of South Carolina proposes to add a regulation which provides a process for the Commission to electronically serve documents that are electronically filed with the Commission. The regulation is necessary to provide a documented procedure for parties who utilize the Commission's Docket Management System's (DMS) Electronic Filing (EFile) System. The Notice of Drafting regarding this regulation was published on February 22, 2019, in the *State Register*, Volume 43, Issue 2.

Section-by-Section Discussion

103-817.1. This new section, when it becomes effective, covers the procedures for Electronic Service of legal filings submitted to the Commission by external stakeholders. The proposed regulation closely follows the South Carolina Supreme Court's Electronic Filing Policies and Guidelines, specifically Guideline 4. E-Filing and E-Service.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit written comments to the Public Service Commission, Clerk's Office, 101 Executive Center Drive, Suite 100, Columbia, South Carolina 29210. Please reference Docket Number 2019-59-A. To be considered, comments must be received no later than 4:45 p.m. on Friday, July 12, 2019. Interested members of the public and the regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the Public Service Commission on Wednesday, August 21, 2019, at 10:00 a.m. in the Commission's Hearing Room, 101 Executive Center Drive, Columbia, South Carolina 29210.

Preliminary Fiscal Impact Statement:

Although the Commission anticipates incurring some costs to configure its Docket Management System (DMS) to electronically serve the documents referenced herein, the Agency expects postage and other related costs to decrease for its internal and external stakeholders when the proposed regulation is implemented. The Commission has obtained a preliminary quote from a computer programmer related to the tasks necessary to configure DMS for successful implementation of this project. At this time, the Commission anticipates that this configuration will cost less than \$20,000.

Statement of Need and Reasonableness:

This statement of need and reasonableness was determined pursuant to S.C. Code Ann. Section 1-23-115(C)(1) through (3) and (9) through (11).

DESCRIPTION OF REGULATION: 103-817.1. E-Filing and E-Service.

Purpose: By way of background, in 2012, S.C. Code Ann. Section 58-3-250 was amended for the Commission to serve its final orders or decisions by electronic service, registered or certified mail, upon all parties to a proceeding or their attorneys. Thereafter, Regulation 103-817 was amended so that the Commission can serve certain procedural documents such as Prefile Testimony Letters and Notices by electronic service or by U.S. Mail. The proposed Regulation 103-817.1. provides the Commission with the authority to configure the DMS to electronically serve all the representatives of parties in a docket upon the E-Filing of any motion, pleading, or other paper subsequent to the summons and complaint or other filing initiating a case. Upon the E-Filing of a document other than a paper initiating a docket, the DMS will generate and transmit a Notice of Electronic Filing to the parties' representatives. The purpose of the proposed Regulation is to provide real-time service of filings made at the Commission and more efficient use of resources for the Commission and its external stakeholders. The Commission utilized the South Carolina Supreme Court's Electronic Filing Policies and Guidelines, Guideline 4. E-Filing and E-Service, as a reference in drafting Regulation 103-817.1.

Legal Authority: S.C. Code Ann. Section 58-3-140.

Plan for Implementation: The proposed regulation will take effect upon approval by the General Assembly and publication in the *State Register*. Thereafter, the Commission's Project Management Team, including the computer programmer, will plan and execute necessary changes to the DMS.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed Regulation 103-817.1. is needed and is reasonable as the Commission will be able to implement a more efficient and real-time process to serve its E-Filed documents upon parties' representatives. Affected persons should receive these electronically served documents more quickly than they would through the U.S. Mail. Another benefit of this proposal is that it will make the process of service more transparent for stakeholders.

DETERMINATION OF COSTS AND BENEFITS:

The costs related to the code configuration of the Commission's DMS is less than \$20,000. The benefits will greatly outweigh those costs due to real-time service and transparent records of the Commission's operations, including service of E-Filed documents, and other external stakeholder benefits such as decreased administrative costs and more timely receipt of filings.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The regulation will have no detrimental effect on the environment or public health if the regulation is not implemented. The adoption of this Regulation will result in diminished consumption of resources, including photocopying materials and fuel.

Statement of Rationale:

The purpose for Regulation 103-817.1. is to add a process for the Commission to electronically serve documents which are E-Filed with the Commission. The proposed Regulation promotes an improved and more efficient process to serve parties with E-Filed Commission documents. There was no scientific or technical basis relied upon in the development of this regulation.

Text:

103-817.1. E-Filing and E-Service.

A. Electronic Filing. The electronic transmission of a document to the E-Filing System in accordance with this Regulation constitutes the filing of that document in accordance with Title 58 of the South Carolina Code and the Commission's Regulations in Chapter 103 of the South Carolina Code of State Regulations.

B. Official Record. Where a document is E-Filed, the electronic version of that filing constitutes the official record. E-Filed documents have the same force and effect as documents filed by Traditional Means. Documents filed by Traditional Means may be converted to electronic format and made part of the docket by the Clerk's Office. Once converted, the electronic version constitutes the official record.

C. Timeliness. A document transmitted and received by the E-Filing System on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed with the Commission on that date, provided it is subsequently accepted by the Commission. Nothing in this Regulation should be construed to reduce or extend any filing or service deadlines set by statute, the South Carolina Rules of Civil Procedure, or orders of the Commission, except requests for extensions of time to file documents. Such requests must be filed with and approved by the Commission.

D. "Notice of Electronic Filing" or "Notification of Electronic Filing" ("NEF") is a notice generated by the E-Filing System at the time of a filing or other Commission action. An NEF is transmitted by email to all Authorized E-Filers who have filed a Notice of Appearance and are counsel of record in the case and includes a description of the filing and a list of parties to whom the NEF was transmitted.

E. Electronic Service.

(1) Electronic Service of Process not Authorized. Service of process or service of any pleadings initiating cases cannot be accomplished through the E-Filing System. The E-Filing System may not be used for service of process of a summons and complaint, subpoena, or any other pleading or document required to be personally served under Rule 4, SCRCP (South Carolina Rules of Civil Procedure).

(2) Service of Other Papers on Authorized E-Filers by the E-Filing System. Except as provided in sub-paragraphs (A) and (B) below, upon the E-Filing of any pleading, motion, or other paper subsequent to the summons and complaint or other filing initiating a case, the E-Filing System will generate and transmit an NEF to all Authorized E-Filers associated with that case after the filing has been accepted for processing by the Commission. Where the parties are proceeding in the E-Filing System and a pleading, motion, or other paper must be filed, made, or served under the Commission's statutes or regulations or the SCRCP, upon the filer's receipt of a confirmation email stating that the filing has been accepted for processing by the Commission, the E-Filing of that pleading, motion, or other paper, together with the transmission of an NEF, constitutes proper service under Rule 5, SCRCP, Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations, as to all other parties who are

E-Filers in that case. It is the responsibility of an E-Filer to review the content of the E-Filed document in the E-Filing System to determine its force and effect.

(a) No NEF will be created at case initiation; however, the E-Filing System will transmit confirmations of receipt and acceptance of the filing.

(b) NEFs are only transmitted via email to representatives of parties of record. E-Filers should comply with Commission Regulation 103-805 (Representation) for entering an electronic notice of appearance when making an initial responsive filing in a case that was initiated via the E-Filing System.

(3) Service Complete Upon E-Filing. Service of a pleading, motion, or other paper by NEF subsequent to the summons and complaint or other filing initiating a case is complete at the time of the submission and the Clerk's Office acceptance of the pleading, motion, or other paper for E-Filing, provided an NEF is transmitted by the E-Filing System in accordance with paragraph (e)(2) of this Section. The act of E-Filing the pleading, motion or other paper is the equivalent of depositing it in the United States Mail under Rule 5(b)(1), SCRCP, Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations. The NEF constitutes proof of service under Rule 5(b), SCRCP, Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations, and the date of service shall be the date stated in the NEF as the "Official File Stamp." Where notice of the filing of a pleading, motion, or other paper is served by an NEF, the E-Filer need not file proof of service, but the E-Filer must retain a copy of the NEF as proof of service.

(4) Time to Respond Following Electronic Service. Computation of the time for a response after service by NEF is governed by Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations.

(5) Service By or Upon a Party Who is Not an E-Filer in a Case.

(a) E-Filed motions, pleadings, or other papers that must be served upon a party who is not represented by an Authorized E-Filer in the case or who is a Traditional Filer must be served by a Traditional Service method in accordance with Rule 5, SCRCP, Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations. An Authorized E-Filer who has E-Filed a motion, pleading, or other paper prior to service of the motion, pleading, or other paper shall serve a paper copy of the corresponding NEF on the Traditional Filer(s). The Authorized E-Filer must also file proof of Traditional Service as to all other parties who are Traditional Filers.

(b) Traditional Filers must continue to serve all parties with a paper copy of the motion, pleading, or other paper by a Traditional Service method in accordance with Rule 5, SCRCP, Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations, and file a copy of the motion, pleading, or other paper with the Commission, together with proof of service, as required by Rule 5(d), SCRCP, Title 58 of the South Carolina Code and Chapter 103 of the South Carolina Code of State Regulations.

(6) Failed Transmission of NEF. If an Authorized E-Filer becomes aware that the NEF was not transmitted successfully to other Authorized E-Filers in the case, or that the NEF is deficient, the Authorized E-Filer shall, upon learning of the failure or deficiency, serve the E-Filed document by email, hand delivery, facsimile, or first class mail. Proof of such service shall be E-Filed with the Commission within one business day of service.

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